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Appendix
House Legislative Sentiments
Index

Pages 1563-2203

HOUSE REPORT - Ought to Pass as Amended by Committee Amendment "A" (H-860) - Committee on CRIMINAL JUSTICE AND PUBLIC SAFETY on Bill "An Act To Further Implement the Recommendations of the Commission To Improve the Sentencing, Supervision, Management and Incarceration of Prisoners" (EMERGENCY)

(H.P. 1409) (L.D. 1903)

TABLED - April 7, 2004 (Till Later Today) by Representative RICHARDSON of Brunswick.

PENDING - ACCEPTANCE OF COMMITTEE REPORT.

Representative FAIRCLOTH of Bangor moved that the Bill and all accompanying papers be **INDEFINITELY POSTPONED**.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Faircloth.

Representative FAIRCLOTH: Mr. Speaker, Men and Women of the House. There are terrific and important policy provisions in this piece of legislation, which I support. I cannot in good conscience support this piece of legislation as written. Although I have the greatest respect for all the members of this House, I must speak to my reasons for Indefinitely Postponement.

Let me give you this example. A man meets a woman in a bar, not his domestic partner. He goes out to the parking lot with her. He beats her and breaks the bones in her face. The response of this legislation to that situation would be to allow for increased good time for that offender and decreased probation, tying the hands of the judge, not allowing him to have increased probation or even current probationary ranges in that situation. That is not all. Ladies and gentlemen of the House, if that same offender serves his time, gets out of jail, goes to another bar, meets another woman, not his domestic partner, takes her to the parking lot and beats her and breaks the bones in her face, then once again we will see that there is decreased probation ranges and there is also in addition to decreased probation ranges, they get increased good time for a repeat offender. Is that right? I don't think it is.

Another example, from a real case in Somerset County, Maine, where a drug dealer goes and sells Oxycontin to a child near a high school. In that situation there is decreased probation ranges available and nearly double the good time available for that offender. That is not all, ladies and gentlemen of the House, if he serves his time, gets out, goes and sells drugs again to a child, still increased good time and decreased probationary ranges available. Consider these examples. Those who speak in favor of this legislation, they may talk about crowding in the prisons, but I ask why are these repeat offenders afforded these leniencies? I don't know the answer.

A child molester, ladies and gentlemen of the House, solemnizes a five year old boy. He does his time. Gets out and burglarizes a home. This commission would propose that on that second offense that he have, again, increased good time available to him and decreased probationary ranges available to him. An armed robber goes into a home, ties up a woman, hits her, takes her money, arbitrarily increased good time and decreased probation. A real example from a case in Waterville, I don't know if the ladies and gentlemen of the House are familiar with something called curb checking. Curb checking is when you place someone's face against a curb and kick them in the back of the head with their teeth against the curb. This happened in Waterville, Maine. In that situation, decreased probationary ranges and increased good time available. Repeat arson, same thing. All of these situations, these are serious offenses.

In 1995 we passed the truth in sentencing law. This legislation nearly doubles the good time available. It is not right.

It is a violation of the spirit of the truth in sentencing law. If you want to decrease probationary periods for career criminals, vote for this bill. If you want Oxycontin addicts, think about this in Washington County, Class D crimes to have no probation, none, so they can't get treatment, vote for this legislation. If you want someone who tortures animals, Class D crime, who later will be the one who leaves a woman for dead in the woods, to not have probation hanging over their heads so they cannot get treatment, vote for this legislation as written.

I gave a speech a few weeks ago about the USA Patriot Act. I believe in civil liberties and I believe in civil liberties for victims as well. I am a proud liberal Democrat. I am proud of it. I favor decreased probation for first time offenders, not repeat offenders as this proposes. I favor elimination of probation for most misdemeanors, but not the examples I gave of Oxycontin possession, not the examples I gave of torturing animals. No, sir, I don't support it. I favor moderate increased good time. I agree with the Chief Justice of Maine. I agree with the Attorney General of Maine both of whom served on the sentencing commission and both of whom oppose the near doubling of good time proposed in this bill. It harms the truth in sentencing law. It harms the spirit that we passed in 1995.

This legislation is well intended. I have spoken to the merits and I credit the merits and good intentions of all people, who are on your side of this issue. I am for it. Too much of the time, in this legislation, has been spent counting the bodies in DOC and not counting the bodies of the women who are victims of getting beat up, not counting the bodies of the children who die from Oxycontin. We need to care about that. The State of Maine has the lowest incarceration rate in the United States. Let me repeat that. The State of Maine has the lowest incarceration rate in the United States of America. We are not hard on crime in the State of Maine, not a bit.

I served as chair of Sex Crime Commission and there was a shotgun wedding between the Sex Crime Commission Report and the Sentencing Commission Report. As written, this report of the Sentencing Commission is not something I can support. Serving on the Sex Crime Commission was a woman named Jennifer Parsons, who was a childhood victim of sexual assault. We worked seven months to improve the laws for victims of sex crimes. We did a good job and achieved near unanimity. Her bravery in speaking for victims of sexual assault counts. It is with a heavy heart that I speak out. I speak out for those who are victims of assault as well. I ask you in this House that there are ways that can craft this legislation. There are other ways to do it that do all the things that I have suggested and relieve the pressure on the correctional system. I would rather the Sex Crime Commission Report die than support this legislation as written. Thank you men and women of the House. I request a roll call.

The same Representative **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE** the Bill and all accompanying papers.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

Representative BLANCHETTE of Bangor **REQUESTED** that the Clerk **READ** the Committee Report.

The Clerk **READ** the Committee Report in its entirety.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Blanchette.

Representative BLANCHETTE: Mr. Speaker, Ladies and Gentlemen of the House. This is a very important piece of legislation. With all due respect to my fellow legislator, Representative Faircloth, I disagree with some of his assessments of what this bill will do and will not do.

For six months very, very qualified people from the State of Maine, Senator Mary Cathcart was the Senate Chair and Mac Dionne was sheriff, deputy commissioners of corrections, Everett Fowell, district attorney from Kennebec County, Representative Carol Grose from our own House, Honorable Joseph Jabar, Thomas Humphrey, Marty Magnusson, Justice Robert Mullen and the Chief Justice of the Maine Supreme Court were on this committee. They worked extremely hard for six months to craft a sentencing bill that will, in some parts of it, alleviate the overcrowding in the state prison.

To take a walk back through history, and I am sure I am not refreshing many legislators that are here today, their memory, when we went to the polls two years ago and there was a bond issue to build a new prison, it went down to defeat in flames. It didn't just simmer. It just exploded into a working fire. The people in the State of Maine cannot, will not, at this time bond the money to build a new prison. This commission knew that. They went into that thinking, what can we do to ease the overcrowding of the prisons? They came up with some very, very good recommendations. One of the them was to add good time as a working tool.

Let me just educate you very briefly on what good time is and what good time is not. It is not an automatic you get it if you are in jail. Every day that you are incarcerated in any Maine State Prison, you earn good time. Step over the line. You don't earn good time. The committee recommendation was to go to 11 days a year good time. The committee, Criminal Justice and Public Safety, 13 legislators from this House and the other body, came out and recommended unanimously, there was not holding back from any one of us, that this was a good bill and needed to be passed. The Commission to Study Incarceration of Prisoners completed in this year, in their six months, half of the recommendations that they have to look at. It will be carried on and they will continue to look at this. Go home and talk to your sheriffs. Some of the sheriffs that served on this commission, ask them what they are doing about the overcrowded positions in their jails. They have three people sleeping in a cell that was designed for one. Maine State Corrections has four people in a cell that was designed and accredited for one. Murder is going to happen. It will happen very, very quickly if we do not act immediately to do something to alleviate the overcrowding.

The Sexual Offender Commission that the good Representative from Bangor, Representative Faircloth, served on. They did a wonderful job. Everybody was at the table. The Commission to Improve the Sentencing and the Supervision Management and Incarceration of Prisoners comes out with a negative price tag because we are going to be putting people out on work release, diversionary sentencing, which the judge will have the option. The sex offender bill that the commission worked dutifully and did an admirable job on, comes with a positive price tag. A price tag that we do not have the money to fund. We had to take the minus to offset the plus. We have done that. We have done it very well. The sexual assault associations in the State of Maine were at the table. They were at the workshop. They had a voice in what we were doing. They expressed their concerns. We looked at them and made recommendations.

Ladies and gentlemen, I am going to ask you to vote against this Indefinite Postponement and move on to pass a bill that needs to be put into law as soon as possible and that is LD 1903, move the Majority Report, Ought to Pass as Amended. Please, let's do something for the people who sent us down here. We are protecting our people. We are on the right track. If you derail

this now, I don't really know where we are going in our state prison. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Topsham, Representative Lessard.

Representative LESSARD: Mr. Speaker, Ladies and Gentlemen of the House. There are a few things that haven't been mentioned by the previous speaker. Probation would not be extended, but lessened for those that are Class A and B crimes, convicted of. It failed to mention the fact that the increased time at the discretion of the judge, depending on the severity of the crime that was committed, and the guilty finding. This is where the justice can impose the appropriate sentence above and beyond the usual A and B crimes, therefore, you don't have to be quite concerned about probation. Probation would be in the final analysis of what took place and also what the individual did while incarcerated as far as the programs are concerned. We heard testimony from just about everybody on that commission indicating that programs that are instituted within the facilities, work time, educational, mental health, all these things add up to recidivism that probably shouldn't happen and won't happen if these programs are undertaken. I must say there are some things in this bill that I don't particularly like myself. I am a long-time law enforcement officer of 42 years. I have seen the violence. I have seen the things that have happened that are hard to speak about. I can tell you that these people are still human beings. The victims should be taken care of and in the future think about their well-being. What I am trying to say, Mr. Speaker and ladies and gentlemen of the House, this whole bill is something that we should pass and I can live with. There has been give and take on that committee. It was a unanimous report. There are some things that I really don't like, but the commission is still going to be in place. There are things that can or will be changed, but for the time being, especially for the sexual assault provisions in this particular bill, we should pass this now. It is important that we do pass it. Thank you.

The SPEAKER: The Chair recognizes the Representative from York, Representative Andrews.

Representative ANDREWS: Mr. Speaker, Ladies and Gentlemen of the House. Please bear with me. I am having a bit of a struggle right now. As you all know, I have been the victim of violence and I don't know how many times since I have been up here for the past six years where I have had to confront that and it brings back unpleasant memories and I am a little bit shaky.

Having said that, I was contacted a few months ago when this bill was first coming out and asked to speak on it. This was the bill that I was not able to get a couple of until the day of the hearing, a 31-page bill. I was contacted by several victim's groups because they knew that I had been a victim and felt that I might be supportive. I was informed by this group that no member of victim's groups were involved in this task force that came up with the bill that came out.

I have to say, ladies and gentlemen, that unless you have worn the shoes and walked the mile, you can't possibly understand how a victim feels. There was many things that I was going to talk about regarding the bill, the concerns that I have about this finished product, but the good Representative Faircloth has brought up most of them. I would add a couple of items. There was a letter in the paper from a member who had been on the commission who does not agree with this unanimous report. I know this is a unanimous report, but it is a critically important report. One of the duties we have here is to be fiscally responsible, but we have a duty to protect the public. I do not believe with this bill that we are actually fulfilling our duty to fully protect the public. Yes, the prisons are crowded, but is it right to turn repeat offenders out sooner just because the prisons are

overcrowded. When you talk about repeat offenders, I would ask you to remember that often the crime that they are sentenced for is not the crime they committed. It is a known fact that in order to save the court systems money, we plea bargain. A person who commits murder could actually be sentenced to manslaughter or assault and battery with a dangerous weapon, but this individual actually committed the crime of murder. It goes on and on and on. I would ask you to please think about the victims and about our responsibility to protect the public and to protect all the citizens of Maine. Thank you.

The SPEAKER: The Chair recognizes the Representative from Kossuth Township, Representative Bunker.

Representative **BUNKER**: Mr. Speaker, Men and Women of the House. I was an ex-facto, I guess, member on the Corrections Committee. I was not appointed to the committee, but I was allowed to come and to represent everybody north of Augusta, east of Augusta, west of Augusta because there was nobody on the commission from our end of the world was participating. I asked to come and sit in the background and listen to all of the proceedings. I stand here to today to tell you today that there is not a unanimous report out of the Corrections Commission that is reflected in this bill. I want you to know that it may be a unanimous decision out of the committee of jurisdiction, but many members of the commission that met diligently trying to come up with creative ideas had differing opinions and did not unanimously support the end result that came out of the committee of jurisdiction.

I know it is the committee's bill once they have it, but ladies and gentlemen, there is so much rolled into this bill, hodgepodge and stuck together and totally inappropriately in my mind as far as a prior law enforcement officer trying to work with a DA in a DA situation. I got two piles of paperwork from two separate DAs that have negative input on this bill in numerous areas. There are pages and pages of their concerns. The good Chair from Criminal Justice mentioned that Everett Fowell was one of the members of the commission. Everett Fowell strenuously opposes this bill, because of the problems that this bill provides to the proper enforcement and prosecution in dealing with these heinous offenders.

We sat there day after day at these hearings and the victims came in front of us and every one of them said, lock them up longer, give them longer probation, don't let them come out and do what they did to my family. I had the opposite view. I think that we need alternative sentencing. We need to be creative in our sentencing. That can be done through various means of giving latitude to the judges and also giving latitude to the DAs to do creative things. As you saw in the paper just last week, the DA has a creative solution with the county jail over in Sagadahoc where he is allowing people to do arrest at home if they are not violent people after they do a third of their sentence. There are a lot of creative ways to solve this solution, ladies and gentlemen, but I will pass on something that is going to be, quite frankly, a DA and a defense attorney's wonderful chance to plea bargain and play the system through all the loopholes that appear in this bill.

This is not going to be well received by your constituents across the state. If anybody in here, like myself, has been the victim of a serious crime, the gentleman that shot me and my friend, the forest ranger, is doing 35 years and he is doing it the hard way in Thomaston in maximum security. These people need probation. These people need supervision when they come out. He made it very clear that when he comes out, he is going to re-offend. I think this is the wrong way to go. We have the lowest incarceration rate in the country. We have the second lowest or the lowest crime rate in the country. We should be very

proud of that. If we don't want to spend money to lock up the worst of the worst, and don't forget that they don't get to jail unless they have been to the DA three or four times, then we should be reflecting upon what we are doing. This bill is strictly a bunch of number crunchers that want to cut costs. Just open the doors and roll the people out of the jail to save money instead of building the proper facilities this state needs to make our state safe. Thank you.

The SPEAKER: The Chair recognizes the Representative from Cornville, Representative Mills.

Representative **MILLS**: Mr. Speaker, Men and Women of the House. Really this bill simply exhibits some of the basic tensions that we see in managing our government every day. There is no free lunch. We cannot have things both ways. It is very, very clear that this bill is, if you want to put a label on it, soft on crime. It increases good time from five days to nine, that is the authorized good time per month. It decreases substantially the amount of probation that a judge is authorized to impose on someone once he or she is released from incarceration. If you want to call it soft, you may do so. It is the proper label for what this bill does. Years ago, good time used to be accumulated at the rate of 15 days per month and there was a movement some years ago to toughen up our laws, a truth in sentencing movement, if you will. Authorized good time is reduced at that time from 15 days to five days. Now, as the prisons and the jails are filling up with people who are there for 80 percent of their denominated terms, we find that we can't afford to keep the prisons open or to build new ones to accommodate them. We are now experiencing a retrenchment. The pendulum is swinging back and we are revisiting the sentencing laws to see if we can't cut costs, not for the coming year or even next year, but in the years to come. With anything we do, it is a lot like playing the organ, you press the key, but you don't hear the tone for quite some time. It takes a while for the system to adjust to any big changes that we may make.

We have a budget proposal from the Bureau of Corrections to say that if we are going to get prison inmates off the floor, if we are going to stop triple and quadruple bunking them, if we are going to create any sense of security at some of our institutions of incarceration, they are going to need a minimum of \$2.7 million and they need it in the budget that will lie before you on Monday. Current discussions on the majority side of the budget fabrication indicate that the amount that will be allocated will be only \$1.4 million, not nearly enough to take care of the crisis that is looming in several of our institutions. We can't have this both ways. Either we have to go soft on crime in order to solve the situation over the long haul or we have to put up money. I would suggest at this point in time we really may have to do both. We need to put up a lot more money to implement, frankly, the policies that were enacted 10 and 12 years ago and we need to take some measure to let people out sooner and to reduce what happens to them when they do get out. They are too often returning because of violations or technical violations of probation.

There is no easy answer to this. We can act poetic and get excited and be emotional about the issue, but it really comes down to dollars versus policy on crime and there is no escaping the hard realities. I will be opposing the current motion for that reason.

The SPEAKER: The Chair recognizes the Representative from Calais, Representative Perry.

Representative **PERRY**: Mr. Speaker, Ladies and Gentlemen of the House. I do not disagree with most of this bill. I will say that. There are some good portions in this. I do have some concerns. As I look at this, there is an exemption from probation from all Class D crimes. As I look at this, a Class D crime for a

misdeemeanor of possession of Schedule W Drugs, which includes Oxycontin, Crack Cocaine, Cocaine, LSD and such is a misdemeanor, a Class D crime which requires no probation. One of the things that we have working with substance abuse in the county, we definitely have a problem with that, is drug court. Drug court with probation offers for those people who really need the help to get out from under the opportunity to get out from under their drug problem. The other misdemeanors that are Class D crimes that are also exempt and I don't necessarily disagree with the exemption is that all theft crimes that require no breaking in in terms of damaging to get in, forgery crimes, criminal trespass, prostitution offenses, some property destruction crimes. These are also crimes that when people are using drugs also commit. If they are doing this over and over and over again and they are being picked up for possession and it is still a Class D crime and they get no probation and they get no push to get the help that they need, where does this really leave the community? My concern is that we don't look at repeat offenders differently. Also, the drug court is set up for the earlier offenders or the earlier drug abusers, which if we do this we are going to get much more hardened drug abusers into drug court and its success rate will be affected.

I ask that you reconsider this and Indefinitely Postpone.

The SPEAKER: The Chair recognizes the Representative from Farmington, Representative Mills.

Representative MILLS: Mr. Speaker, Men and Women of the House. I rise to address some of the issues addressed by previous speakers. This bill has been called soft on crime. I would vehemently disagree with that characterization. There are many provisions of this bill that drastically increase the potential sentences for major sex offenders, particularly sex offenders who offend against children under the age of 12. It is a major substantive change in our sentencing provisions in our criminal code that is hardly characterized as being soft on crime.

With respect to the probation and the so-called good time issues, I would like to give a little bit of history. There has been some history given already. So-called good time is now broken up into several different pieces. One of the basic good time that can be earned by good behavior, that is not misbehaving in prison or in jail. The second category is work time, work, employment, rehabilitation kind of time, things that people should be doing when they are behind bars to rehabilitate themselves. We want to give some incentives to people, burglars and all kinds of people doing time in prison to turn their lives around rather than simply warehousing these inmates for years on end. Give them an incentive. This bill gives them a couple days extra incentive to do that kind of thing while they are behind bars.

There are some misapprehensions about what is being termed good time in this bill and in the criminal code. Good time used to be something that was earned automatically. It was calculated up front. You barely set foot in the doorway of the prison and you have good time up front. You have up to 15 days a month, roughly half your time off.

In 1995, the federal government offered some federal funds for construction purposes and persuaded many, many states to change their good time provisions. Maine did so. Maine went down to about five days total of possible earned good time. This bill reaches a middle ground and provides basic good time of four days a month, plus an additional chunk of time that can be earned while a person is behind bars of five days a month, which we are calling work time. That is not calculated up front. It has to be earned as you go, month to month. It is something an inmate has to learn in accordance with their basic transition and rehabilitation plan that is worked out while they are behind bars. It gives them that incentive.

Keep in mind that many of the other states that also changed their laws back in 1995, 1997, under the federal incentive program also have parole. Good times combined with parole in those other states meant very early release, much to the dismay of many victims. Maine does not have parole. We do not release people early on parole. We got rid of parole in 1976. It makes a difference in terms of the calculability and the determinability of how victims and members of the criminal justice system see the sentencing process. We were much more in line with truth in sentencing before truth and sentencing became law.

The commission that I served on, as well, for six months carved out at the request of victim advocates, sexual assault and other victim advocacy groups, we listened to them every day that we had session. We had a full day of hearings and much of the testimony was about victim interests. We accommodated those interests in the commission report. We further accommodated those interests in the committee bill by carving out of the expanded good time provisions, sex offenses, domestic violence, most of these violent crimes that you have just heard so much about. A person charged with murder or convicted of murder, gross sexual assault and all crimes of domestic violence will not even be able to earn the good time, the extra good time.

We also listen to these groups because they were very moving in their testimony before the commission and before the committee as well later on. We carved out major exceptions to the changes in the probation statute. There were two major changes in the probation statutes. One is to decrease the maximum amount of probation that a person might be sentenced to.

Originally when the code was enacted the periods of probation permitted were three years maximum for Class A or Class B, two years maximum for Class C and one year maximum for a Class D or E. This bill proposes that the maximum for an A four years, for a B be three years and for a C be two years and for D or an E one year. Again, we carved out of that reduction, however, crimes committed against a family or household members, domestic violence crimes, the maximum for those crimes is six years if it is a Class A. We kept the maximum of six years and four years for a B or C. There are other provisions already in the criminal code about lengthening the period of probation for serious sex offenders and repeat offenders. Those are untouched by this bill.

The suggestion that we have not listened to victims are quite contradicted by the history of this bill and the history of the commission that worked so hard to put it together. We also have a provision in the probation section of the code that you have heard about that deletes probation as an option for certain misdemeanors. We carved out of that again, we kept the possibility of probation as a sentencing alternative for crimes of domestic violence. The end result is basically people convicted of any felony are allowed to be placed on probation as part of a longer sentence with incarceration or without. Same sentencing alternatives that currently exist in the law. People convicted of misdemeanors are able to be put on probation if they are crimes of a certain nature, such as domestic violence, sex offenses and what not. That option still exists.

For those property offenses that have been referred to or possession of drug offenses, keeping in mind most trafficking or furnishing charges are felonies, they are still going to have all the options they have now. For those other misdemeanors, the few that don't fall under the exceptions now, there is something called administrative release so that a person can still sentence a person to drug court for possession of drugs, Oxycontin and the like, whether it is a repeat offense or a single offense. A person can still be sentenced to drug court and have to report back to

the court under the close supervision provisions of the drug court system. A person can still be ordered to counseling. A person can still be ordered to make restitution and confirm that with the court within a certain period of time, up to a year, and report back to the court. This is sort of probation light if you will. It is sort of a court ordered, court administered probation without the probation department having to open a file for these misdemeanor drug possession offenses with some form of supervision over the behavior of that individual, but without overburdening the probation department as it is now.

Let me say a word about that. We learned in our commission over the six month period of time that we studied these issues that the probation officers have case loads now of up to 300 per probation officer. The average is over 140 cases per probation officer. The national recommendation is no more than 90 offenders be assigned to one probation officer. We far exceed that national average. The number of probation terminations for technical violations also exceeds the national average and is overburdening our jails and our prison systems. The fact is we have many people on probation for longer periods of time than ever before. We determined in this commission that that was probably not the way to go. People could change their behavior without the supervision of a probation officer. Secondly, we found, we observed, that probation is no longer meaningful when the caseloads are as high as they are today in the Department of Corrections.

It is our goal as the Criminal Justice and Public Safety Committee and the Commission to Improve Sentencing, Incarceration, Supervision and Management of Prisoners. It is our goal to maintain strict controls, supervision and probation for domestic violence offenders, sex offenders, for violent criminals, all the horrible things you just heard about from previous speakers. We want to be able to control the behavior of those offenders and preserve our scarce resources so to make probation and incarceration more meaningful for the people we need to control and keep off the streets and supervise day to day without diluting it as it has become diluted in our system because of the sheer mass of numbers. So many of those numbers being first offense shoplifters, criminal trespass cases, people who are not likely to come back to the court system and who can be supervised or controlled without probation, without the supervision of a probation officer, without the probation department having to open a file, maintain records and maintain weekly reporting.

That, in summary, is what this bill tries to do. It is not soft on crime. It is very tough on crime in so, so many respects. It is also respectful of the scarce resources of the Department of Corrections. Mention was made that a bond issue failed recently, a few years ago. According to my calculations, four bond issues failed in the last 12 or 13 years. The people have spoken. The people have spoken loud and clear. We have built two massive new facilities in the last 10 years. I can't remember exactly when the Super Max was built. We have two massive new modern correctional facilities. We need to preserve those facilities for the very violent criminals who need to be behind bars and prioritize our resources. That is what this bill aims to do.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Faircloth.

Representative FAIRCLOTH: Mr. Speaker, Men and Women of the House. I gave some examples at the beginning of my remarks. A man finds a woman in a bar, not his domestic partner, beats her, breaks the bones in her face and under this legislation that is before you now, there would be increased good time and there would be decreased probation ranges for that offense. I repeat, because we are talking about repeat offenders,

this is my greatest objection, it is also true that if that same offender did their time, got out, did the exact same thing to another woman, still decreased probationary periods, increased good time and the great majority of offenders get good time.

The other example, selling Oxycontin to children. Again, nearly double the good time increase and decrease the probation, no speaker contradicted it because it is true. If this person does their time, gets out and repeat offenses, still with the repeat offender, increased good time and decreased probation ranges.

There has been talk about fiscal impact. There are lots of ways to address that. I have a list here of misdemeanor crimes that are included in the sentencing report that I am glad they eliminated probation for, theft crime misdemeanors, all negotiating worthless instruments, all forgery crimes, public disorder, criminal trespass, trespass by motor vehicle, criminal invasion of computer privacy, false swearing. The majority of misdemeanor crimes, yes, we could eliminate probation, but do we want to do? Do we eliminate probation for Oxycontin? Don't tell me the story about administrative release. There is no supervision. Without supervision administrative release is not meaningful for an Oxycontin addict in Washington County where we face these desperate problems and throughout this state. This is not a realistic response. The DA can't monitor these people. The court clerk cannot monitor these people. It is not realistic. There are lots of ways to decrease the probation caseload, but not with the specific kinds of crimes to which I object.

There has also been talk about fiscal impact, the sex offender legislation stands alone. Yes, it does have a fiscal impact. You know when and how? Sixty thousand dollars in FY 10, zero this year. In fact, the sentencing commission has zero impact this year. There is no fiscal impact either way for either piece of legislation. It is a red herring. What we need to do is address public policy intelligently. While I have great respect for the good Representative Lessard to extend probation on this. Maybe he wants to offer an amendment later, but there is nothing about extended probation for As and Bs. As and Bs get decreased probationary periods under this legislation. That is how it works.

The good Representative from Cornville stated that this legislation is soft on crime. I don't know if I will editorialize about that. All I will state is the facts. Maine has the lowest incarceration rate in the United States of America. We do not and should not allow repeat offenders to have decreased probationary periods. Given that circumstance, we cannot, we should not exempt from probation where they can get help, people like Oxycontin addicts or people who torture animals who later might leave a woman for dead in the woods. We shouldn't remove them from probation. That is bad, terrible public policy and you don't need to do it. We can still exempt the majority of misdemeanors from probation, still relieve probationary burdens without going to this radical extreme that endangers the public. Repeat offenders of arson, you are going to increase good time and decrease probationary periods, aggravated assault, the curb checking case I gave you. Again, no one contradicted a single one of those examples because they are all exactly true.

I cannot in good conscience support this legislation. We need to reject it and then I think we can work together to move on, to deal with repeat offenders in a more thoughtful way, perhaps, to deal with misdemeanor offenses and still exempt them in a more thoughtful way to support the Attorney General of the State of Maine and to support the Chief Justice of the State of Maine who were members of the sentencing commission and who opposed the increased good time proposed here. There might be a way to increase good time, but let's not nearly double it. It is too radical.

It is too harsh and it is too harsh on victims. That is who we are here to represent. I thank the men and women of the House.

The **SPEAKER**: The Chair recognizes the Representative from Augusta, Representative O'Brien.

Representative **O'BRIEN**: Mr. Speaker, Ladies and Gentlemen of the House. I have to say I am very, very conflicted about this bill and about the motion before us. I want to start by saying that I very, very much respect the work of the commission, the two commissions actually and the work of the Criminal Justice Committee. I know that having been a member for four years of that committee and still very interested in the committee work, I know they worked very, very hard and this is not an easy subject. This is very complicated. It is very complex and very emotional.

There is no question in my mind that we have a crisis in the correctional system. There is severe overcrowding in our county jails, severe overcrowding in chaos in our prison system at the moment. I firmly believe when the commissioner tells us that there will be an incident in our prison system. I believe that there is a tragedy waiting to happen. That is why I fully support any appropriations that he asks for to elevate the overcrowding in the state prison.

I also believe we have a severe crisis in the probation system. The probation officers are not able to handle the caseloads that they have. We are way beyond the maximum recommendation of caseloads. They are not supervising. There is a false sense of security out there. The probation officers are not able to handle it. As a member, eight years ago, my first year of the Criminal Justice Committee I went in to speak to the Chief Executive at the time and ask for and we got, we were able to get, extra probation officers, more than the commissioner asked for. As someone who does not like to spend the state's money, this is an area I believe we absolutely need to put our money where our mouth is. However, I have serious problems with pieces of this bill. I am very glad that we were able to bring it up. Even though it is a unanimous committee report and again, I respect that very much, I think that this is a bill that has too many pieces, very serious pieces, to let it go through without discussion and without debate.

As I said, I believe there are very good pieces of this bill. There are pieces that I support wholeheartedly. However, as the previous speakers have mentioned, there are ones that I really have problems with. When committee members say and commissioner members say and our Chief Justice and our DAs are saying and our Attorney General says that there are parts that they can't accept, then I have a problem with that. This is a compromise. Compromise is a good thing. Compromise in something of this magnitude, I just really have a problem with. I believe that we should be voting on these separately. I think that although these issues need to be dealt with now, I just have a problem with it. I would ask that you support the Indefinite Postponement.

The **SPEAKER**: The Chair recognizes the Representative from Bangor, Representative Blanchette.

Representative **BLANCHETTE**: Mr. Speaker, Ladies and Gentlemen of the House. I am not going to stand up here and go through a whole litany of reasons that I believe you need to vote against this Indefinite Postponement. I just want to gently remind you that two panels of very, very qualified individuals have reviewed the sexual assault problem that this state faces and the incarceration of prisoners. A vote to Indefinitely Postpone is going to wipe out six months of very, very good work.

That wouldn't bother me. It really truly probably, I wouldn't even lose a wink of sleep over it like I did last night over this very issue. If, in fact, there was a backup plan to help with the sexual

assault of children, with the sexual assault of animals, with the sexual assault of anybody and the gross overcrowding in our correctional facilities. Indefinitely Postpone this and you have done nothing to solve any one of these problems. We have approximately one week left in this legislative session before we are going to be sent home. I hope you have a wonderful summer because you are going to be picking up the paper reading about the increase overcrowding in our correctional facilities because fortunately for us as a people, the court systems still continue to work. They still continue to sentence people on a daily basis. As a state run facility or a county run facility, the option of saying excuse me judge, I don't have room for this prisoner today, delay their sentencing for five years when I get some room and I can accommodate them.

Our hotel door has to stay open. I don't care how many hours our correction guards have to work. We demand that they work 18 and 20 hour stretches at a time with nasty type people. These are not the good kids in the sandbox that they are dealing with. They are tired. They are overworked. They need relief. This is going to give the prison system, both on the county level and on the state level, some relief. Indefinitely Postpone this and I wish you the very best of summers and enjoy your freedom, because we are going to be back to deal with this horrific problem again in January that will have escalated to the point of crisis. Some of you remember the lock down that happened at the state prison a few years ago. I can almost guarantee you that you are going to have another one very, very shortly. You don't want to be there. Don't volunteer to go down and be a guard. It is not a pretty situation. Thank you Mr. Speaker.

The **SPEAKER**: The Chair recognizes the Representative from Poland, Representative Snowe-Mello.

Representative **SNOWE-MELLO**: Mr. Speaker, Ladies and Gentlemen of the House. I have sat here and I have listened to all the arguments. I will tell you when this report first came out, my committee members know full well that I did not like it. I didn't want to go along with it. I despised it. I hated it. I always felt that folks back home sent me up here to protect their best interests, to make sure they are safe from crime and be able to put away people where they belong in prison.

Along came a real and true, serious problem. I had to start thinking twice. I finally decided that I needed to work along with my committee members to do whatever we could to ease the burden at our state prisons with the overcrowding. We are really, really in a serious situation in our state prisons.

I also looked at the fact that Maine people have denied us every time we have put a bond out, except for the Warren Prison, they rejected the building of more prisons. Ladies and gentlemen, we are darned if you do and you are darned if you don't. This report, I think we have worked extremely hard. Yes, there are parts in it that I really don't agree with. I have a problem with the drugs and the lack of probation. Guess what? We don't have enough probation officers out there as it is. The probation officers that we have now barely have the time to spend any time with the folks out there.

I am very annoyed and angry that the good Representative put an Indefinite Postponement on this bill. It did not allow for the bill to at least go through the system and bring up the debate on what is good about it and what is not good about it. We expected some amendments on the bill, but to just Indefinitely Postpone it, just won't allow it to go anywhere. The committee has worked extremely hard. There are members on it, Representative Gerzofsky, also was not happy with this bill when it first started. Each one of us really dug in our heels and really worked on this bill. We compromised. I ask you to please vote against the

Indefinite Postponement of LD 1903 and allow the bill to continue through the process and let's see where we end up.

Give it a chance. That is what I am asking.

The SPEAKER: The Chair recognizes the Representative from Harrison, Representative Sykes.

Representative **SYKES**: Mr. Speaker, Ladies and Gentlemen of the House. As I listen to the objections or the reasons for Indefinitely Postponing this bill, one of the major reasons I hear is the increase in good time. This morning good time is broken into actually two areas. Good time for behavior, which currently is two days per month and the bill proposes that it go to four days per month. The other section of good time is for work education rehabilitation. That currently is three days per month and the suggestion the bill says that it would like to go five days a month. I think it is important for you to understand why I supported that increase in good time. The behavior part of this, ladies and gentlemen, is an administrative tool. These people in prison need a reason to behave. The Department of Corrections, the corrections officers need all the administrative tools they can get. Many days in some of these prisons there is chaos. We are going to have even more chaos if there is not a good reason to behave and some sort of a reward for that. Not all the prisoners and the inmates get their good time for behavior.

As far as the work, educational rehabilitation, I supported that because by research and what is going on in other states, these are the people that complete a work education rehabilitation program and have a far less recidivism rate. That is one of the things that we need to do. I don't want to get into all the other aspects of the bill, but the increase in good time to me is a real positive aspect of this bill. It is not dangerous. It is needed. We need the administrative tool to help these people behave, to help our corrections officers. We need the increase in work education and rehabilitation to help the offenders to turn their life around. By research and by what has been found in this area, this is where we are making a difference. Thank you.

The SPEAKER: The Chair recognizes the Representative from Woolwich, Representative Grose.

Representative **GROSE**: Mr. Speaker, Ladies and Gentlemen of the House. I am on the Criminal Justice Committee and I was chosen for the Prison Commission Sentencing Commission. I have to tell you this is a very, very difficult decision to make on this bill that is being presented to us. We had six meetings, one meeting a month. In six meetings we are trying to get everything done and to correct all the problems of the prisons. You can't do that. We didn't even touch on the mental illness, which I was interested in at the time. I have gone and I have visited jails and prisons. I went and spent a day up with the women in the prisons. It is an education. I really recommend that everybody just do this. I never personally thought of prisons or criminals or anything until I got on the Criminal Justice Committee. It is kind of scary, but it is exciting at the same time because you learn so much from this. I am also a domestic violence advocate. I work with victims. As my seatmate, Representative Faircloth, mentioned, women with their faces smashed in. I have seen that. I have seen worse than that. I am not soft on crime. Personally, in my opinion, I don't believe in good time. If a person does a crime, you go to jail and you serve it. I just want to say if we have the lowest rate of incarceration in our prisons, then why are they full already? Is this a good bill? No. Is this a bad bill? No. This is a start. I think this is a very good start. If we could pass this, we could tweak it along the way. We need something done now. The victims are out there and the prisoners are in there and the prisons are full. We are going to end up having a situation where we are going to be paying. Everything I noticed up here seems

to be involved with the almighty dollar. We are going to be paying more than what we are now for people being in prison. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Faircloth. Having spoken twice now requests unanimous consent to address the House a third time. Is there objection? Chair hears no objection, the Representative may proceed.

Representative **FAIRCLOTH**: Mr. Speaker, Men and Women of the House. I do want to clarify for the record that as House Chair of the Commission to Improve Community Safety and Sex Offender Accountability, I strongly support the contents of that report, but that commission and its 17 members were not consulted about the contents of the Sentencing Commission Report or sought to get approval for the Sentencing Commission Report. If we were involved in some deliberations on that, then that might be another matter. We did not vote on, consider or accept that repeat offenders would have increased good time ranges or decreased probation. We did not consider or accept that people who are Oxycontin addicts would have no probation whatsoever. There are lots of ways to work together to reconsider this and move this legislation forward. I strongly favor that. We can exempt many misdemeanors from probation. We can make sure that first time offenders have decreased probationary periods, but that is not what this proposal is before us. I could not in good conscience support it in that posture, although there are many good things in the sentencing report. I stand by my Indefinite Postponement motion and look forward to the time where there are possibilities of working together on ways to moderate the issues regarding misdemeanor offenses, good time and repeat offenders. Thank you.

The SPEAKER: The Chair recognizes the Representative from Farmington, Representative Mills.

Representative **MILLS**: Mr. Speaker, Ladies and Gentlemen of the House. Just to clarify two points here, one regarding the good time. I just want to be very clear. The provisions of this bill do not kick in immediately. The provisions of this bill apply to people who haven't even committed crimes yet. The provisions of the bill do not apply to people currently incarcerated or currently on probation. The good time provisions, in particular, don't apply except to people who commit crimes on or after August 1st of this year. It is entirely prospective in that respect. I don't want people to have a fear of some violent criminals or others being turned loose on the street. That is not at all the purpose or the intent or affect of this bill prospectively or otherwise. Good time is not automatic, as I said before. It has to be earned. It has to be in conjunction with a plan, a program achieved by the inmate and the administration of the prison or jail. It does not come automatically off the top of the sentence, not by any means. We are not returning to the pre-1995 changes. Secondly, we have, in fact, the highest increase in incarceration of any state in the nation in the last few years. The highest increase of any state in the nation. That is something we have to keep in mind because the projections are so drastic that the projected impact on our system is so drastic that if we don't make some changes now, we have to do something and this bill is a good foot forward. Thank you.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Gerzofsky.

Representative **GERZOFSKY**: Mr. Speaker, Ladies and Gentlemen of the House. I don't hardly know where to start on this. I am just sitting here with everybody else listening to a lot of hyperbole and misinformation. I thought I would get up and straighten some of it out. Let's start with good time. Do you know what good time is? You work in a prison, it is a tool. When

somebody spits on the grass you can say, 30 days loss of good time. The guards love to say it all the time. What you get, they take away also. It is a tool to be used. The only thing they really give you at Thomaston or Warren is hots and cot, three hot meals and a cot to sleep in. Everything else you have to earn. I worked there for a short period of time. I learned that it is not easy doing time in Thomaston. It is not easy doing time in Warren. If you get any good time, I have heard a lot about good time today, you lose it just as fast. Guards have no problem in taking away from the bad people. I doubt if there is hardly any of them that graduated from that prison with any good time on the books. If they do, it is a darn short period of time. I have also heard today other things. I heard that if you are a pedophile, you are going to get away with it or something close to it. I made sure that it is in the law, with the help of my committee, that if you want to be a pedophile in the State of Maine, we will give you lifetime probation with treatment and a dog leash around your neck so we know where you are and what you are doing. That is the truth. It is in the bill. If you do it the first time, you get 18 years. If you come out and do it the second time, for the rest of your life, you are going to be reporting to a probation officer and getting treatment. We, as a committee, came up with a unanimous decision and that, ladies and gentlemen, is a major big deal on my committee. We can usually fight about what time it is. We worked this bill and worked this bill. We took the parts out that we didn't like. I had a problem with getting rid of mandatory minimum sentences. I think if you kill somebody in this state, there should be a minimum mandatory sentence. We took that out of the bill. It was part of the report, but not part of the bill. If you kill somebody in Maine, you are going to go to jail or prison for a minimum amount of time of 20 years. If you are 20 years old, you are going to be 40 years old coming out and probably drooling. Going to jail is where bad people should be. If we can't make room for them, we are in trouble. They are going to be out on our streets. If we don't have room for them on probation, they are not going to be monitored and we are going to have more problems.

Ladies and gentlemen, this bill needs to continue its track of legislation. It doesn't need to be killed in its infancy today. I can't urge you enough to know that this is not soft on crime. It is tough on crime. If it wasn't, I wouldn't stand here and take up your time. You have had enough time taken up today. Thank you very much.

The SPEAKER: A roll call has been ordered. The pending question before the House is Indefinite Postponement of the Bill and all accompanying papers. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 412

YEA - Andrews, Annis, Berube, Bierman, Bowen, Bryant-Deschenes, Bunker, Carr, Churchill E, Clough, Collins, Courtney, Cressey, Crosthwaite, Curley, Davis, Dudley, Dugay, Faircloth, Gagne-Friel, Goodwin, Heidrich, Hutton, Jacobsen, Joy, Ledwin, Lewin, McCormick, McKenney, McNeil, Moody, Moore, Murphy, O'Brien J, Peavey-Haskell, Perry A, Perry J, Stone, Vaughan, Watson.

NAY - Adams, Ash, Austin, Barstow, Beaudette, Bennett, Berry, Blanchette, Bliss, Bowles, Brannigan, Breault, Brown R, Browne W, Bruno, Bull, Campbell, Canavan, Churchill J, Clark, Cowger, Craven, Cummings, Daigle, Dunlap, Duplessie, Duprey B, Earle, Eder, Finch, Fischer, Fletcher, Gerzofsky, Glynn, Greeley, Grose, Hatch, Honey, Hotham, Jackson, Jennings, Kaelin, Kane, Ketterer, Koffman, Landry, Lemoine, Lerman, Lessard, Lundeen, Maietta, Mailhot, Makas, Marley, Marraché, McGlocklin, McLaughlin, Mills J, Mills S, Muse, Norbert, Norton, Nutting, O'Brien L, O'Neil, Paradis, Patrick,

Pellon, Percy, Pineau, Pingree, Piotti, Rector, Richardson E, Richardson J, Richardson M, Rines, Rosen, Sampson, Saviello, Sherman, Shields, Simpson, Smith N, Snowe-Mello, Sukeforth, Sullivan, Suslovic, Thomas, Thompson, Tobin D, Tobin J, Trahan, Treadwell, Twomey, Usher, Woodbury, Wotton, Young, Mr. Speaker.

ABSENT - Duprey G, Jodrey, McGowan, McKee, Millett, Rogers, Smith W, Sykes, Tardy, Walcott, Wheeler.

Yes, 40; No, 100; Absent, 11; Excused, 0.

40 having voted in the affirmative and 100 voted in the negative, with 11 being absent, and accordingly the motion to **INDEFINITELY POSTPONE** the Bill and all accompanying papers **FAILED**.

Representative CARR of Lincoln **REQUESTED** a roll call on the motion to **ACCEPT** the Committee Report.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: A roll call has been ordered. The pending question before the House is to accept the Committee Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 413

YEA - Adams, Ash, Austin, Barstow, Beaudette, Bennett, Blanchette, Bowen, Bowles, Brannigan, Breault, Brown R, Bruno, Bull, Campbell, Canavan, Churchill J, Clark, Collins, Courtney, Cowger, Craven, Cummings, Daigle, Dunlap, Duplessie, Earle, Eder, Finch, Fischer, Gerzofsky, Glynn, Greeley, Grose, Hatch, Honey, Hotham, Jackson, Jennings, Kaelin, Kane, Ketterer, Koffman, Landry, Lemoine, Lerman, Lessard, Lundeen, Maietta, Mailhot, Makas, Marley, Marraché, McGlocklin, McLaughlin, Millett, Mills J, Mills S, Moody, Muse, Norbert, Norton, Nutting, O'Brien L, O'Neil, Paradis, Patrick, Pellon, Percy, Perry J, Pineau, Pingree, Piotti, Rector, Richardson E, Richardson J, Richardson M, Rines, Rosen, Sampson, Saviello, Sherman, Shields, Simpson, Smith N, Snowe-Mello, Sukeforth, Sullivan, Suslovic, Sykes, Thomas, Thompson, Tobin D, Tobin J, Trahan, Twomey, Usher, Watson, Woodbury, Wotton, Young, Mr. Speaker.

NAY - Andrews, Annis, Berry, Berube, Bierman, Browne W, Bryant-Deschenes, Bunker, Carr, Churchill E, Clough, Cressey, Crosthwaite, Curley, Davis, Dudley, Dugay, Duprey B, Faircloth, Fletcher, Gagne-Friel, Goodwin, Heidrich, Hutton, Jacobsen, Joy, Ledwin, Lewin, McCormick, McKenney, McNeil, Moore, Murphy, O'Brien J, Peavey-Haskell, Perry A, Stone, Treadwell, Vaughan.

ABSENT - Bliss, Duprey G, Jodrey, McGowan, McKee, Rogers, Smith W, Tardy, Walcott, Wheeler.

Yes, 102; No, 39; Absent, 10; Excused, 0.

102 having voted in the affirmative and 39 voted in the negative, with 10 being absent, and accordingly the Committee Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-860)** was **READ** by the Clerk.

Representative FAIRCLOTH of Bangor **PRESENTED House Amendment "A" (H-875)** to **Committee Amendment "A" (H-860)**, which was **READ** by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Faircloth.

Representative **FAIRCLOTH**: Mr. Speaker, Men and Women of the House. This amendment retains the vast majority of the two commission reports on which there were months of work of both commissions, which are to be greatly commended. However, it also addresses certain significant issues. It deals with a small list of misdemeanor offenses for which probation is appropriate. The vast majority of misdemeanor offenses under this amendment would still be exempt from probation. Such crimes as Oxycontin possession, Schedule W drug possession,

such crimes a torturing animals, which is a Class D crime would be subject to probation. This makes sense to allow for treatment for those who need treatment and who need the supervision, but leaves a vast majority of misdemeanors exempt from probation, thus relieving the burden on the probationary system.

The next provision deals with repeat offenders. It says, yes, let's shorten the probationary period for first-time offenders, but once someone has proven beyond a reasonable doubt once that they have committed a criminal offense and then go out a second time and prove beyond a reasonable doubt that they have committed another offense, they are not the people who should have shortened probation and that the current law probationary periods should apply.

Again, the Attorney General of the State of Maine and the Chief Justice of the Supreme Court of the State of Maine both oppose the increase in good time from five to nine. This proposed amendment will increase good time. It will relieve the burden on the correctional system and move good time from five days to seven days. This is important legislation. It is worthwhile, but without this amendment, it is dangerous to community safety. This adds to community safety while relieving the burden on the correctional system, relieving the burden on the probation system. Thank you men and women of the House. I move acceptance of this amendment. Thank you.

Representative BLANCHETTE of Bangor moved that **House Amendment "A" (H-875) to Committee Amendment "A" (H-860) be INDEFINITELY POSTPONED.**

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Blanchette.

Representative BLANCHETTE: Mr. Speaker, Ladies and Gentlemen of the House. I am not going to stand here and dispute the good Representative from Bangor, Representative Faircloth's argument. What I am going to tell you is that more than ample opportunity was given to every person in that hearing room when we worked these bills cover to cover three times, to propose amendments, make modifications. This amendment that is before you, the one that I had moved to indefinitely Postpone, is the crafting of certain individuals that felt they knew more than the commission that studied these problems. I am not going to disagree. They probably do. Who am I to say that they don't? This is there privilege, but this is not the way this Legislature needs to operate. If we allowed every outside interested entity to come here and tell us how we needed to craft laws, I would hate to see what our laws would look like. Everybody has a different perception on what is to be done. The people who are at the table in these study commissions were the very brightest people that could be gathered together and commit six months of their time. They worked through these. The Supreme Court Justice of the State of Maine worked through these. Judge Robert Mullens whose mother in law sits right beside me, Lillian O'Brien, worked through all of these. Everybody has worked hard on these, including House and Senate members. We have a good bill. It does not need an amendment. I would encourage you to vote and follow my light to Indefinitely Postpone this House Amendment. Thank you Mr. Speaker.

Representative TRAHAN of Waldoboro **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE House Amendment "A" (H-875) to Committee Amendment "A" (H-860).**

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Waldoboro, Representative Trahan.

Representative TRAHAN: Mr. Speaker, Ladies and Gentlemen of the House. I would like to rise in support of this

current amendment. This piece of legislation, in my opinion, is extremely controversial. It is also extremely dangerous to the public. I have a unique situation where I get to live closely with my brother and sister-in-law, both police officers. One is a deputy chief of police or vice chief of police, but I get to see everyday and hear the stories about the different offenders that are out there committing crimes. One thing that I have seen over a period of time is that people who commit crimes often times commit those crimes repeatedly. What my concern is with this report as proposed without the amendment, is that it takes a giant leap of faith that these criminals that are out there aren't going to commit them in the future. I have a real problem with that. I think that this amendment takes a little bit slower approach to allowing these people back into the communities. I have a fear that if this bill passes, that although it will relieve our problems in the prisons, we will place that new burden upon our constituents to increase crime, to increase enforcement at the local level and it will create more problems than it proposes to fix.

With this amendment, I ask you to support it. Take a slower approach. If, through time, this proved to not be a problem, then it can be very easily expanded. I think that this Legislature should take a cautious approach to putting people back into the communities that are going to cost our constituents through crime and through their taxes. Thank you.

The SPEAKER: The Chair recognizes the Representative from Calais, Representative Perry.

Representative PERRY: Mr. Speaker, Ladies and Gentlemen of the House. I think that this amendment is a good compromise. First of all, I am glad to see in this amendment that the Schedule W drug possession has probation with it. The one thing that I have seen with my work with drug addicts is they need a hammer over their heads sometimes to be able to complete and go through the process that they need to go through. What probation does is it gives them the option, if they break it, they go to jail. That sometimes is the one thing, especially the one time when they do slip up, they get to jail and they realize this means business. It takes them a good year to begin to think straight, quite honestly, getting out from under the drugs. They need all the help they can get. They also need the very, very strict guidance that they need to get with this.

This bill leaves out and I am not adverse to that, the minor theft, the burglaries, the breaking in that doesn't require any property damage and stuff with that. There are a lot of first-time offenders. All they need to do is see what they have done and get out from under it. I agree. If they are repeating and repeating and repeating, we need to have an opportunity to look at this a bit differently.

I am also very happy that added to this is the cruelty to animals. Getting them to treatment as early as possible, rather than waiting for the behavior to escalate to something more violent, is going to be preventative and cost us less in the long run. I ask that you support the amendment and vote against the Indefinite Postponement. Thank you.

The SPEAKER: The Chair recognizes the Representative from Kossuth Township, Representative Bunker.

Representative BUNKER: Mr. Speaker, Ladies and Gentlemen of the House. I am very pleased that we are at this point. I don't think there is anybody during the last debate that wanted to Indefinitely Postpone this bill in its entirety. I don't think there is anybody in this body that wanted to do that. There is too much good in this bill to allow it to not go forward and allow it become law. I think there were some concerns that maybe this amendment wouldn't be allowed to be offered or some concerns out there. Some unintended things happened. I am very pleased to see that this amendment is here. This is what we should have

debating last time. This amendment is only positive. It is a friendly amendment based on a chair of one of the two commissions that got cobbled together. I don't think that this amendment should be in any way, shape or form taken by the committee of jurisdiction as being something that is thrown in their face or that they didn't do a good job. We all know that at the 11th hour, at the end of session that these committee hearings were done in a very rushed way. You guys took the time and effort to show up to those five or six meetings and really dig your heels in and work on this. Even with the best work of all the 13 members of the committee of jurisdiction and the many focuses of people that came before you, there are some things that may have been overlooked or may have been counter to what the other commission was trying to achieve. I would ask you not to support this Indefinite Postponement and allow this friendly amendment that corrects many of the concerns that some of us had to go forward and I think then we can all stand proud that we move forward with something that may very well help our correctional institute get through its troubled time as well as give Washington County the tools necessary as the chair of the Washington County Drug Action Team, we need the tools necessary to take our Oxycontin folks and our people that are hooked on drugs and be able to place the right amount of supervision over them to give them a chance to be viable citizens. Our citizens do want to be viable. They just need a chance to do that. This amendment by the good Representative from Bangor, Representative Faircloth, allows us that this amendment would allow us the added tools necessary to do a better job of what we have been trying to establish for a year and a half together with our task force to move forward. I would ask you to support our backyard and your backyard that has similar problems and pass this amendment and vote against the Indefinite Postponement.

The SPEAKER: The Chair recognizes the Representative from Farmington, Representative Mills.

Representative MILLS: Mr. Speaker, Men and Women of the House. As a member of the committee and the commission who worked on this bill for many, many months, I do not consider this to be a friendly amendment as it was recently characterized. I consider it an amendment whose intent and purpose is to dilute and undermine the effect and purposes of the bill, the unanimous committee report. I would add that during the commission hearings and during the committee we did hear from the good Representative from Bangor, Representative Faircloth, on behalf of the commission that he served. We made accommodations for his concerns in the commission's report. There was only one minority report for that commission. It was one DA. The Chief Justice did not file a minority report as has been suggested. The Attorney General did file a minority report as has been suggested. They made their views known and the commission issued its report and the committee did its work. We did accommodate the concerns of the Sex Offender Commission and incorporated so many of their provisions in the bill. With respect to the good time, the proposed further reduction, I would say that just last week we debated hotly and heavily in the committee regarding whether the total maximum amount of good time work time combined should be 11 days. We came down to nine days. The nine days is certainly a compromise and was as low as the committee felt it should go. This was a unanimous committee report. We had to make tough choices on the commission, tough choices on the committee. I am not going to repeat what I said previously regarding the previous motion, but there are many sentencing alternatives that are opened up in this bill, rather than restricting the choices that judges may make. I ask you to join with me in voting to Indefinitely Postpone this amendment, which

will completely dilute and undermine the purposes and affect of this good bill.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Faircloth.

Representative FAIRCLOTH: Mr. Speaker, Men and Women of the House. I want to clarify some factual points. The Attorney General of the State of Maine, the Chief Justice of the State of Maine on the sentencing commission on which they served as members, voted against the increase in good time from five days to nine days. It is in the record of the report. It is also true in addition that DA Everett Fowle filed a minority report on the entire report of the commission. Furthermore, the Sex Crime Commission did not ever expect to be joined together with the Sentencing Commission. It was not contemplated at the time when I spoke before the Sentencing Commission. I spoke about sex crime issues to inform them what we were doing and they made accommodations as to sex crime issues. There was never at that time any contemplation that these two reports would be joined. Others said that they thought joining them would increase the likelihood of passage of the Sentencing Commission if the two were joined together. Then the Sex Crime Commission was not, at that time, polled or given a chance to consider the merits of the Sentencing Commission. We did not poll our Sex Crime Commission members on that point.

I want to quote someone earlier in the debate who said, an outside interested entity should not be involved in this discussion. I am not sure what outside interested entities are affected by this amendment, except for victims. If you are someone who is an Oxycontin addict, it will help you get probation and thus help you get treatment. If the situation I described with a woman being beaten up in a parking lot, it will help her. Perhaps she is an outside interest. I don't think she is an outside interest. I think she is the victim of a crime. To let repeat offenders have reduced probationary periods is wrong. I am for, as I said earlier, I am for the great majority of aspects of the Sentencing Commission Report, even after leaving the Criminal Justice Committee. This amendment will increase good time. This amendment will give the great majority of misdemeanors exemption from probation. This amendment will allow first-time offenders to have reduced probationary periods. It will have great salutary affect on the burden on the correctional system with the amendment. It will help the report, but it will not allow repeat offenders to get reduced probationary periods. It doesn't make sense.

It doesn't say, let's let Oxycontin folks off without getting them some probation. These are reasonable proposals. I repeat again that the Attorney General and Chief Justice did indeed oppose the increase of good time from five to nine days. I agree with their concern. Thank you.

The SPEAKER: The Chair recognizes the Representative from Topsham, Representative Lessard.

Representative LESSARD: Mr. Speaker, Ladies and Gentlemen of the House. I think I alluded to that on the original bill, but in conjunction with this other amendment that is proposed, let's think of it this way. Probation, a lot of our debate in committee centered around probation. Our fear was that with not enough probation or too much probation, the judges would have the leeway, too much leeway. Guess what? If you don't get much probation, you are going to get more jail time, depending on the seriousness of the crime and it is indicated in the bill itself. The judge has the latitude if the seriousness of the crime calls for a severe sentence. It is going to happen. Never mind the probation. It is going to happen. Probation is at the end of everything that takes place. Here we have a problem. We have a problem with probation officers that can't control their probationers because they don't have the manpower. Let's be

realistic. It is nice to put people on probation. It is easier to put them on probation, but where is the supervision. We don't have the funds to do all that. I suggest to you that this is a good compromise and it is a good way of handling the original bill. I would discourage you from voting for this. Thank you.

The SPEAKER: The Chair recognizes the Representative from Manchester, Representative Moody.

Representative **MOODY**: Mr. Speaker, Ladies and Gentlemen of the House. This has been a tough assignment for all of us. I think everyone here appreciates the intense work that the committee has put in on this matter and our votes reflect respect for that. On this particular amendment, there has been no unanimous ruling. I am as conflicted over this as most of you are. It seems to me that this bill comes down to dollars versus safety. I can't think of anything that demands any more of our dollars than the safety of our citizens, especially our children, from repeat offenders.

When members of the commission come forward publicly and oppose this bill or offer this amendment as a compromise, then it seems to me that we have to listen. I intend to vote in opposition to this motion. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is Indefinite Postponement of House Amendment "A" (H-875) to Committee Amendment "A" (H-860). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 414

YEA - Adams, Ash, Barstow, Beaudette, Bennett, Berry, Blanchette, Bliss, Bowles, Breault, Brown R, Bruno, Bull, Campbell, Churchill J, Clark, Courtney, Cressey, Cummings, Daigle, Duplessie, Earle, Eder, Fischer, Gagne-Friel, Gerzofsky, Glynn, Greeley, Grose, Hatch, Honey, Hotham, Jacobsen, Jennings, Kaelin, Kane, Ketterer, Koffman, Landry, Lemoine, Lessard, Lundeen, Maietta, Makas, Marraché, McGlocklin, McLaughlin, Millett, Mills J, Mills S, Moore, Muse, Norbert, Norton, Nutting, O'Brien L, O'Neil, Paradis, Pineau, Rector, Richardson E, Richardson J, Rines, Saviello, Shields, Simpson, Smith N, Snowe-Mello, Sullivan, Suslovic, Sykes, Thomas, Treadwell, Usher, Woodbury, Wotton, Young, Mr. Speaker.

NAY - Andrews, Annis, Austin, Berube, Bierman, Bowen, Brannigan, Browne W, Bryant-Deschenes, Bunker, Canavan, Carr, Churchill E, Clough, Collins, Craven, Crosthwaite, Curley, Davis, Dudley, Dugay, Dunlap, Duprey B, Faircloth, Finch, Fletcher, Heidrich, Hutton, Jackson, Joy, Ledwin, Lerman, Lewin, Mailhot, Marley, McCormick, McKenney, McNeil, Moody, Murphy, O'Brien J, Patrick, Peavey-Haskell, Pellon, Percy, Perry A, Perry J, Pingree, Piotti, Richardson M, Rosen, Sampson, Sherman, Stone, Sukeforth, Thompson, Tobin D, Tobin J, Trahan, Twomey, Vaughan, Watson.

ABSENT - Duprey G, Goodwin, Jodrey, McGowan, McKee, Rogers, Smith W, Tardy, Walcott, Wheeler.

Yes, 78; No, 63; Absent, 10; Excused, 0.

78 having voted in the affirmative and 63 voted in the negative, with 10 being absent, and accordingly **House Amendment "A" (H-875) to Committee Amendment "A" (H-860) was INDEFINITELY POSTPONED.**

The SPEAKER: The Chair recognizes the Representative from Waldoboro, Representative Trahan.

Representative **TRAHAN**: Mr. Speaker, Ladies and Gentlemen of the House. I feel that this legislation has gone way too fast. I just have to rise and say that I think when all the members of this chamber that have a history in law enforcement stand up and oppose something, you have to listen. I just feel like we are making a mistake. I hope in two years I don't have to come back here and remind us. Mr. Speaker, when the vote is taken, I request a roll call.

I hope the ladies and gentlemen of the chamber that they look very closely at this bill. I think we will see it again.

Representative **TRAHAN** of Waldoboro **REQUESTED** a roll call on the motion to **ADOPT Committee Amendment "A" (H-860).**

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: A roll call has been ordered. The pending question before the House is Adoption of Committee Amendment "A" (H-860). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 415

YEA - Adams, Ash, Austin, Barstow, Beaudette, Berry, Blanchette, Bliss, Bowen, Bowles, Brannigan, Breault, Brown R, Bruno, Bryant-Deschenes, Bull, Campbell, Canavan, Churchill J, Courtney, Cowger, Cummings, Curley, Daigle, Dudley, Dunlap, Duplessie, Earle, Eder, Finch, Fischer, Gerzofsky, Glynn, Greeley, Grose, Honey, Hotham, Hutton, Jacobsen, Jennings, Kaelin, Kane, Ketterer, Koffman, Landry, Lemoine, Lerman, Lessard, Lundeen, Maietta, Mailhot, Makas, Marley, Marraché, McCormick, McGlocklin, McLaughlin, Millett, Mills J, Mills S, Moody, Muse, Norbert, Norton, Nutting, O'Brien L, O'Neil, Paradis, Patrick, Pellon, Percy, Perry J, Pineau, Pingree, Piotti, Rector, Richardson E, Richardson J, Richardson M, Rines, Rosen, Sampson, Saviello, Sherman, Shields, Simpson, Smith N, Snowe-Mello, Sukeforth, Sullivan, Suslovic, Sykes, Thomas, Thompson, Tobin D, Twomey, Usher, Watson, Woodbury, Wotton, Young, Mr. Speaker.

NAY - Andrews, Annis, Bennett, Bierman, Browne W, Bunker, Carr, Churchill E, Clough, Collins, Craven, Cressey, Crosthwaite, Davis, Dugay, Duprey B, Faircloth, Fletcher, Gagne-Friel, Joy, Ledwin, Lewin, McKenney, McNeil, Moore, Murphy, O'Brien J, Peavey-Haskell, Perry A, Stone, Tobin J, Trahan, Vaughan.

ABSENT - Berube, Clark, Duprey G, Goodwin, Hatch, Heidrich, Jackson, Jodrey, McGowan, McKee, Rogers, Smith W, Tardy, Treadwell, Walcott, Wheeler.

Yes, 102; No, 33; Absent, 16; Excused, 0.

102 having voted in the affirmative and 33 voted in the negative, with 16 being absent, and accordingly **Committee Amendment "A" (H-860) was ADOPTED.**

Under suspension of the rules, the Bill was given its **SECOND READING WITHOUT REFERENCE** to the Committee on **Bills in the Second Reading.**

Under further suspension of the rules, the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-860)** and sent for concurrence.

The following item was taken up out of order by unanimous consent:

CONSENT CALENDAR

First Day

In accordance with House Rule 519, the following item appeared on the Consent Calendar for the First Day:

(H.P. 1452) (L.D. 1953) Bill "An Act To Validate Certain Proceedings Authorizing the Issuance of Bonds and Notes by the Calais School District" (EMERGENCY) Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought to Pass**

Under suspension of the rules, Second Day Consent Calendar notification was given.

There being no objection, the House Paper was **PASSED TO BE ENGROSSED** and sent for concurrence. **ORDERED SENT FORTHWITH.**